

Exhibit

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Joel B. Rothman

Board Certified in Intellectual Property Law

Direct: 561.404.4335

joel.rothman@sriplaw.com

October 15, 2020

VIA EMAIL: do816@do816.com

Mr. Scott Owens

Do816

416 East 3rd Street

Kansas City, MO 64106

**Re: Bowers v. Do816 & DoStuff Media LLC
Our File No.: 00372-0012**

Dear Mr. Owens,

We are a law firm making a claim on behalf of our client. We know that this is reaching you during a difficult and trying time and that you may have more pressing concerns. We appreciate that responding to this letter may not be your first priority. However, we must receive a response from you so that we know that you are taking this matter seriously, even if you need more time to hire a lawyer or report this claim to your insurance carrier. If we hear from you then we can work with you to understand your position and resolve our client's claim. Please respond to us.

We write on behalf of our client Eric Lee Bowers, a photographer, for purposes of resolving a case of copyright infringement against you by our client. This demand is privileged from disclosure pursuant to FRE Rule 408.

Please provide this letter to your general liability insurance carriers or other providers of insurance that may cover this claim.

Eric Lee Bowers ("Bowers")

Our client is an experienced professional photographer who makes a living from photography. Bowers is a Kansas City based architectural, real estate, and commercial photographer. In addition to photographing architecture and properties for real estate photos, Bowers specializes in construction and capital improvements documentation, political campaign photography, and other events. He is well-regarded for his aerial photography of architecture, real estate and construction.

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Suite 1100
Los Angeles, CA 90067

GEORGIA

12 Powder Springs St.
Suite 200
Marietta, GA 30064

FLORIDA

21301 Powerline Rd.
Suite 100
Boca Raton, FL 33433

TENNESSEE

818 18th Ave. S.
10th Floor
Nashville, TN 37203

NEW YORK

125 Maiden Lane
Suite 5C
New York, NY 10038

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Bowers has amassed a large portfolio of Kansas City's downtown revitalization, the construction of the Kauffman Center for Performing Arts, as well as the final years of open-outcry wheat futures trading at the Kansas City Board of Trade. Bowers sells prints and licenses his photographs on his website. www.ericbowersphoto.com.

Bowers retains all copyrights to his photographs. Bowers licenses his copyrighted Works, such as the one in this case, for commercial use.

Bowers created the image, hereinafter referred to as the "Work."

The Work at issue is shown below.



Bowers registered the Work with the Register of Copyrights on August 5, 2015 and was assigned the registration number VA 1-979-291, a copy of which is enclosed.

Infringement by Do816 and DoStuff Media LLC ("DSM")

We have enclosed contemporaneous evidence of the infringement by DSM. In addition to the infringement, Bowers' photograph was very obviously cropped as shown on the attached. You have employed our client's Work in at least the manner indicated in the evidence attached. You are fully aware that the Work you used is our client's Work. No one from your company ever sought a license from our client to use the Work for any purpose.

You have copied, displayed and distributed our client's Work without permission, license or consent. The use of a creator's photographic image without written consent or license violates the United States Code, Title 17, and The Copyright Act. The Copyright

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Act provides for entry of an injunction directing removal of the offending materials pending litigation. This letter shall serve as formal notice that you immediately cease and desist all unauthorized uses of our client's Work. Any such further uses shall be at your peril.

If you possess a contract, license, agreement or writing on which you will rely for authorization of your use of our client's Work, please provide us with this evidence so we may avoid further controversy or litigation. Otherwise, we will be forced to assume that your use violated the law.

Damages

Copyright law provides several different elements of compensation to Bowers when a work is infringed or altered. Section 504 permits Bowers to recover actual damages plus "any additional profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages," or statutory damages of up to \$150,000 per work infringed if the registration predated the infringement. Bowers can present both damages theories to the jury and select the higher award any time prior to entry of judgment.

Academic studies have demonstrated that the use of good quality photographs more effectively market and advertise products and drive sales. Bowers' photographs are of the highest quality. Bowers' photographs are also scarce since he is one of the only sources of such quality photographs.

Bowers' damages are not limited to what he would have agreed to license the Work for prior to the infringement. Rather, Bowers' actual damages will be measured by the fair market value of the photograph considering DSM's use to sell and promote its business. Bowers' actual damages must be measured in light of DSM's use of Bowers' high quality and unique Work.

This is consistent with federal courts' approach to broadly construing the term "actual damages" to favor victims of infringement. See, e.g., *Davis v. Gap, Inc.*, 246 F.3d 152, 164 (2d Cir. 2001). The fair market value approach for calculating damages is an accepted approach to valuing the defendants' uses of photographs. See *Leonard v. Stemtech Int'l, Inc.*, Nos. 15-3198, 15-3247, 2016 U.S. App. LEXIS 15565 (3d Cir. Aug. 24, 2016). In addition, Bowers can offer evidence of the actual cost to take the photograph infringed on a time and materials basis.

Section 504 of the Copyright Act permits Bowers to recover actual damages plus "any additional profits of the infringer that are attributable to the infringement and are not

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taken into account in computing the actual damages." Therefore, Bowers will also be entitled to DSM's profits from the infringement, based upon the revenue DSM earned in connection with the use of Bowers' Work.

Alternatively, Bowers could seek statutory damages for infringement in an amount of up to \$30,000 per work infringed if the registration predated the infringement. There is also the possibility that a judge or jury could determine that DSM's infringement was willful. If DSM's infringement was shown to be willful, the statutory damage award would increase to an amount up to \$150,000 per work infringed.

Demand

In order to determine how to proceed, please provide us with information and documents showing:

1. the full nature and extent of the use of our client's Work, in any and all formats;
2. representative copies in any and all tangible form and media in which our client's Work was incorporated or employed; and
3. the source of the Work.

Upon receipt of this information we will consider and determine an appropriate amount required to be paid to our client in compensation.

Please carefully consider this letter and the associated exhibits and provide them to your attorneys and insurance carriers. If we do not receive a response from you or a representative by October 29, 2020, we will take further steps to protect our client's rights.

We look forward to your prompt response.

Sincerely,

SRIPLAW



Joel B. Rothman

JBR/jmb
Enclosures

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Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

United States Register of Copyrights and Director

Registration Number

VA 1-979-291

Effective Date of Registration:

August 05, 2015

Title

Title of Work: Group Registration Photos, Eric Bowers 2012 Vol 2, Published approx. Jan. 11, 2012 to Nov. 26, 2012; 744 photos.

Content Title: IMG_0344_copy1 (published approx. January 11, 2012); IMG_0584_copy1 (published approx. January 15, 2012); IMG_0353_copy1, IMG_0373_copy1, IMG_0401_copy1, IMG_0367_copy1, IMG_0379_copy1, IMG_0391_copy1, IMG_0384_copy1, IMG_0406_copy1, IMG_0359_copy1, IMG_0396_copy1, IMG_0348_copy1 (published January 16, 2012); IMG_0668_copy1, IMG_0614_copy1, IMG_0762_copy1, IMG_0662_copy1, IMG_0641_copy1, IMG_0767_copy1, IMG_0941_copy1, IMG_0933_copy1, IMG_0928_copy1, IMG_0808_copy1, IMG_0911_copy1, IMG_0864_copy1, IMG_0784_copy1 (published January 18, 2012); IMG_0694_copy1, IMG_0694_copy1-2 (published approx. January 18, 2012); IMG_1133_copy1 (published approx. January 23, 2012); IMG_1523_copy1, IMG_1532_copy2, IMG_1507_copy1 (published January 27, 2012); IMG_1454_copy2, IMG_1434_5_6_7_8, IMG_1414_5_6_7_8, IMG_1384_5_6_7_8, IMG_1379_80_81_82_83 (published approx. January 27, 2012); IMG_1513_copy1, IMG_1538_copy1, IMG_1542_copy1, IMG_1560_copy1, IMG_1585_copy1, IMG_1574_copy1, IMG_1578_copy1, IMG_1550_copy1 (published January 30, 2012); IMG_1697_copy1, IMG_1677_copy1, IMG_1690_copy1, IMG_1680_copy1, IMG_1669_copy1, IMG_1668_copy1, IMG_1660_copy1, IMG_1647_copy1, IMG_1640_copy1, IMG_1710_copy1, IMG_1712_copy1, IMG_1723_copy1, IMG_1705_copy1, IMG_1692_copy1 (published January 31, 2012); IMG_2137_copy1, IMG_2124_copy1, IMG_2129_copy1, IMG_2127_copy1, IMG_2131_copy1, IMG_2134_copy1 (published February 04, 2012); IMG_1802_copy1, IMG_1807_copy1, IMG_1828_copy1, IMG_1790_copy1, IMG_1731_copy1, IMG_1742_copy1, IMG_1752_copy1, IMG_1758_copy1, IMG_1785_copy1 (published February 06, 2012); IMG_1866_copy1, IMG_1896_copy1, IMG_1863_copy1, IMG_1856_copy1, IMG_1852_copy1 (published February 07, 2012); IMG_1940_copy1, IMG_1956_copy1, IMG_1916_copy1, IMG_1971_copy1, IMG_1925_copy1, IMG_1910_copy1, IMG_1904_copy1 (published February 08, 2012); IMG_2025_copy1 (published February 09, 2012).

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Copyright Claimant: Eric Lee Bowers
 1851 South 31st Street, Apt. D, Kansas City, KS, 66106, United States

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Name: Eric Lee Bowers
Email: eric@ericbowersphoto.com
Telephone: (816)289-9716

Address: 1851 South 31st Street, Apt. D
Kansas City, KS, 66106 United States

Certification

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AUG GLOCK
8:00PM

24 **BRANDY CLARK**
AUG **8:00PM**

28 **FATHER**
AUG **8:00PM**

29 (CANCELED) BREAKING BENJAMIN,
AUG BUSH
5:00PM

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